

EDWARD H. KUBO, Jr. #2499
United States Attorney
District of Hawaii

RONALD G. JOHNSON #4532
Chief, Violent Crime Section

WES REBER PORTER #7698
Assistant U.S. Attorney
Room 6100, PJKK Federal Building
300 Ala Moana Blvd., Box 50183
Honolulu, Hawaii 96850
Telephone: (808)541-2850
Facsimile: (808)541-2958
E-mail: wes.porter@usdoj.gov

Attorneys for Plaintiff
UNITED STATES OF AMERICA

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

APR 20 2004

at 11 o'clock and 05 min. M.
WALTER A.Y.H. CHINN, CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	MAG. NO. 04-0342 KSC
)	
Plaintiff,)	CRIMINAL COMPLAINT;
)	AFFIDAVIT
vs.)	
)	
DAVID FONOTI,)	
)	
Defendant.)	
_____)	

CRIMINAL COMPLAINT

I, the undersigned complainant being duly sworn, state the following is true and correct to the best of my knowledge and belief:

From an unknown date in 1999 through on or about July 2002, within the District of Hawaii, defendant DAVID FONOTI did falsely assume and pretend to be an officer and employee of the United States acting under the authority thereof, to wit: a

Special Agent of the Drug Enforcement Agency, and in such -
assumed and pretended character did act as such, to wit: he
falsely stated that he was a Special Agent of the Drug
Enforcement Agency and pretended to provide confidential
information to an individual regarding an ongoing investigation;
and,

assumed and pretended character with intent to defraud did
falsely demand and obtain a thing of value, to wit: he demanded
and obtained for the United States the sum of five thousand
dollars (\$ 5,000.00) for the purported purpose of relocating a
witness in his capacity as a special agent.

All in violation of Title 18, United States Code,
Section 912.

I further state that I am a Special Agent with the Drug
Enforcement Administration ("DEA") and that this complaint is
based on the following affidavit which is attached hereto and
incorporated herein by reference.

DATED: HONOLULU, HAWAII: April 20, 2004.



GERALD LAWSON
SPECIAL AGENT, DEA

Sworn to and subscribed in my presence, this
20th day of April, 2004:


UNITED STATES MAGISTRATE JUDGE

AFFIDAVIT OF GERALD LAWSON

GERALD LAWSON, after being duly sworn, deposes and says as follows:

1. I am presently a Special Agent with the U.S. Drug Enforcement Administration ("DEA"). I am currently assigned to the Honolulu District Office.
2. Special Agent Gerald Lawson, DEA stated that on or about December 12, 2002, a Cooperating Individual ("CI1") provided the following information about an individual known to him/her as David FONOTI who portrayed himself as a DEA Special Agent:
 - a. CI1 stated that, in 1999, an individual known as David FONOTI ("FONTI") told him/her that he worked for the "DEA." FONOTI further advised that as a DEA agent, he had to work undercover and that his hair and general appearance was a "front."
 - b. CI1 stated that, in the summer of 2001, FONOTI showed him/her a semiautomatic pistol that FONOTI carried in a black fanny pack. CI1 added that, while FONOTI was washing his car, he/she observed a "blue light" in FONOTI's vehicle.
 - c. In April or May of 2002, FONOTI advised CI1 that he was retiring from the DEA and was going to start his own business. However, FONOTI continued to provide CI1 specifics about individuals the DEA had targeted for surveillance and how corrupt the law enforcement officials were in Hawaii. The discussion included the Chief of the Honolulu Police Department, the FBI and former law enforcement officials. FONOTI added that it was for this reason, he (FONOTI) was reassigned with a team from Virginia to Hawaii. FONOTI claimed that his last name was "Liuhan" and that he was working for the U.S. Justice Department.
 - d. In June or July of 2002, FONOTI asked CI1 for five thousand dollars (\$5,000.00) to relocate a witness under protective custody for fear of being revealed by Edward H. Kubo, Jr., the U.S. Attorney for the District of Hawaii.

e. On or about July 26, 2002, CI1 withdrew five thousand dollars (\$ 5,000.00) from the bank and gave it to FONOTI so FONOTI could relocate a witness.

f. Also in July of 2002, CI1 observed FONOTI retrieve a semiautomatic pistol from his black fanny pack and insert a magazine into the pistol. CI1 added that FONOTI inserted the magazine into pistol when FONOTI witnessed some children gathered around his vehicle, a red Mercedes. CI1 indicated that it was the same pistol that he/she observed in FONOTI's possession in the summer of 2001.

g. In December of 2002, David FONOTI wrote CI1 an undated personal check in the amount of \$5,000.00. The undated check was drawn from the Hickam Federal Credit Union with the remitter as "David F. FONOTI," of 94-644 Hanile Street, Mililani, HI 96789 and the notation "loan" on the face of the note. CI1 stated that he/she called the financial institution and found that there were no funds in the subject account.

h. CI1 stated that on or about December 14, 2002, FONOTI repaid him/her two thousand, five hundred dollars (\$2,500.00).

i. An inquiry into CI1's background revealed that he/she did not have a criminal history.

3. Your affiant has had prior contacts with FONOTI and FONOTI was familiar with the methods and practices of a DEA special agent.

4. On or about November 29, 2002, Special Agent Daniel Brady, FBI interviewed a Cooperating Individual ("CI2") regarding criminal violations that CI2 may be aware of. CI2 was recently arrested for violations of Title 21 U.S.C. 841 (a)(1) and 846 - Possession of Controlled Substances with the intent to Distribute Controlled Substances and Conspiracy to do the same. CI2 agreed to cooperate with law enforcement officials pursuant to Proffer Agreement between CI2 and the United States Attorney's Office for the District of Hawaii.

a. CI2 was aware of the methods and practices of trafficking controlled substances because CI2 admitted to being a distributor of crystal methamphetamine ("ice").

b. CI2 stated that, in July of 2001, a Samoan male named "FONOTI" approached him/her and claimed to be a federal agent. FONOTI arrived at a prearranged meeting in a red Mercedes and indicated that he (FONOTI) was conducting surveillance at the Honolulu International Airport. FONOTI advised CI2 that he/she was under investigation and that his/her (CI2's) residence was about to be "raided." CI2 stated that he/she left the State of Hawaii based upon FONOTI's claims of a federal investigation against him.

5. An inquiry into FONOTI's criminal history revealed the following:

a. On February 27, 1987, FONOTI was arrested by the San Jose Police Department in California for the "Taking of a Vehicle without the Owner's Consent," a felony, and "**Impersonation of a Peace Officer**," a misdemeanor. On April 1, 1987, FONOTI was convicted of the Taking of a Vehicle without the Owner's Consent, and was sentenced to sixty days imprisonment and one year of probation.

b. On June 9, 1989, FONOTI was arrested by the Sunnyvale Police Department in California again for the "Taking of a Vehicle without the Owner's Consent," a felony, "Presenting False Identification to a Peace Officer," a misdemeanor, and "**Impersonation of a Public Officer**," a misdemeanor. On March 22, 1990, FONOTI was convicted on all three offenses (as set out above) and was sentenced to one year imprisonment and three years of probation.

c. On February 9, 1990, David FONOTI was arrested by the San Jose Police Department in California for "Forgery," a felony; "Automobile Theft," a felony; "Defrauding an Innkeeper," a misdemeanor; "Presenting False Identification to a Peace Officer," a misdemeanor, and "**Impersonation of a Public Officer**," a misdemeanor. On March 22, 1990, FONOTI was convicted of Forgery and was sentenced to four months imprisonment and three years of probation.


6. An earlier inquiry with the Hawaii State Department of Motor Vehicles ("DMV") revealed that FONOTI's wife, Patricia TUPUA, has registered to her a 1989 Red (original color) Mercedes automobile bearing Hawaii State License Plate Number "GFB-523," also registered to her at 95-644 Hanile Street, Unit E103, Mililani, Hawaii. At the time of

this affidavit, the Mercedes (described above) was painted Silver in color and the current Hawaii State DMV records have the vehicle reflected as "Silver."

7. An inquiry with the Hawaii State Drivers License data base revealed that David FONOTI held a valid Hawaii State motor vehicle operators license with an address of 95-644 Hanile Street, Unit E103, Mililani, Hawaii.

8. On September 15, 1999, DEA Special Agents Lawson and Rothermund recovered a Smith and Wesson .357 caliber revolver from FONOTI.

FURTHER AFFIANT SAYETH NAUGHT.


GERALD LAWSON
Special Agent, DEA

Subscribed to and sworn to
before me this 20th day
of April, 2004.


United States Magistrate
District of Hawaii